

North Carolina Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

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**NC Securities Division
Investor Protection
Hotline**

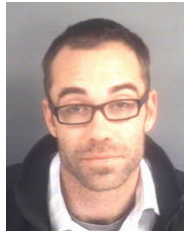
1-800-688-4507



Mailing Address:

PO Box 29622
Raleigh, NC 27626-0622

www.sosnc.gov



Yadkin County Stockbroker Pleads Guilty to Securities Fraud in \$1.4 Million Ponzi Scheme

Charles Caleb Fackrell

Charles Caleb Fackrell, 36, of Booneville, N.C. appeared before U.S. Magistrate Judge David S. Cayer today and pleaded guilty to one count of securities fraud for operating a \$1.4 million Ponzi scheme, announced Jill Westmoreland Rose, U.S. Attorney for the Western District of North Carolina.

U.S. Attorney Rose is joined in making today’s announcement by John A. Strong, Special Agent in Charge of the Federal Bureau of Investigation (FBI), Charlotte Division, and North Carolina Secretary of State Elaine F. Marshall.

According to filed court documents and today’s plea hearing, beginning from in or about May 2012 to about December 2014, Fackrell executed a Ponzi scheme using approximately \$1.4 million in funds he solicited from at least 20 victim investors in Wilkes County and elsewhere. According to court records, Fackrell was a stockbroker who used his position of trust to solicit victim investors and steer them away from legitimate investments to purported investments with “Robin Hood, LLC,” “Robinhood LLC,” “Robin Hood Holdings, LLC,” “Robinhood Holdings, LLC” and related entities (collectively, “Robin Hood”). These were entities Fackrell controlled and through which he could access the victims’ funds.

Court records indicate that Fackrell solicited his victim investors by making false and fraudulent representations, including that the investors’ money would be invested in, or secured by, gold and other precious metals, when in fact Fackrell spent only a fraction of investor money on such assets. According to court records, Fackrell also falsely told victims that Robin Hood was a very safe investment, paying guaranteed annual returns of 5% to 7%. According to court records, contrary to the promises he made to his victims and instead of investing the victims’ funds as promised, Fackrell used the majority of the money to cover personal expenditures, including hotel expenses, groceries, and medical bills, to make purchases at various retail shops and to make large cash withdrawals. Fackrell also used a portion of the victims’ money to make purported “interest” payments to investors who demanded their money back and to induce further investments from existing investors and their friends and family members. In all, according to court records, Fackrell diverted over \$700,000 of his victims’ money – nearly half of the investor money he obtained – back to other investors in Ponzi fashion payments.

According to court records, in an attempt to conceal his fraud, Fackrell asked a third party to destroy a computer and documents related to the Ponzi scheme, explaining that he was in trouble with the U.S. Securities and Exchange Commission.

See “[Fackrell](#)” cont. on page 4



N.C. Investor Day takes on complicated world of finance

By Leo John

Nearly 110 people attended the first N.C. Investor Day conference at the North Carolina Biotechnology Center on April 19 in a day filled with informative panels that sought to demystify finance and investing for North Carolinians.

The day's activities began with an opening welcome by N.C. Secretary of State Securities Division Investor Education Director John Maron, who introduced morning keynote speaker Greg Brown, Director of the Frank Hawkins Kenan Institute of Private Enterprise.

Brown's keynote, "Investing in today's markets" included three broad themes: Six Rules for Investing; Economic Overview for 2016-17; and a markets outlook.



Brown's six rules included the following: save as much as you can (max out 401k, IRA, etc.); spend money wisely and avoid all debt (except a mortgage); keep 6 months cash in a separate account you never use except in real emergencies; create a very diversified investment portfolio with appropriate risk; for public market investments, use only index funds (or very low cost funds: <0.3% expenses); and buy and hold – don't try to time the market.



Conference goes lined up to ask questions during the Investing 101 Panel discussion.

Brown forecasted U.S. economic growth will average 2 percent to 2.5 percent in 2016-17 and listed the strength of the U.S. dollar and the rest of the global economy as potential risks. He also raised the specter of rising prices and said core inflation has already crept above 2 percent.

The first panel, "Investing 101" featured Josh Dorfman of the Asheville Angels; Mariel Beasley of the Center for Advanced Hindsight at Duke University; Alexander T Arapoglou, a finance professor at UNC Kenan-Flagler Business School. The panel was moderated by John Maron.

Panelists touched on common investment methods and strategies, reiterated investors' simple behavioral mistakes and detailed the standards professional investors demand before investing in startup companies.

The next panel, "Starting new ventures and buying into a franchise – steps to a good investment," featured SBA's Patrick Rodriguez; N.C. State University Entrepreneurship Clinic Professor Lewis Sheats; The Support Center's Joe Battle; and N.C. Secretary of State Corporation Division's Daniel Crabbe.

Panelists emphasized that entrepreneurs these days have access to numerous advisors and helpful resources and encouraged them to consider those before jumping headlong into a new venture.

Crowdfunding and entrepreneurship were the focus in the next panel, which featured Benji Jones, an attorney with Smith Anderson, Joseph Nixon, Vice President of Business Development at the N.C. Biotech Center and Christopher Gergen, Co-Founder of HQ Raleigh.

Jones laid out a detailed presentation on the framework for the new federal crowdfunding rules that go into effect in May. Nixon highlighted North Carolina’s success in biotechnology but pointed out the shortage of early-stage funds for new ventures.

Delivering the afternoon’s keynote address, North Carolina Secretary of State Elaine Marshall gave an overview of the agency which she called the “Swiss army knife” for North Carolina citizens, delivering varied services ranging from registering new corporations to maintaining a database of public meetings in the state. Marshall highlighted the federal crowdfunding rules that go into effect next month and called on state legislators to pass the North Carolina Providing Access to Capital for Entrepreneurs and Small Business Act, which would permit intrastate crowdfunding for state companies.



Sec. Marshall presenting the afternoon’s keynote address.

Fueled by eastern-North Carolina barbecue and banana pudding over lunch, attendees returned to discuss the “Changing world of small business finance.” The panel was moderated by Edward Timberlake of The Support Center and included Fred Barringer of SBTDC; Jackie Green, owner, Sweet Cheeks Bakery in Apex; and Jeffery Lyons of Liquid Capital Corp. Panelists highlighted the danger of online outfits pitching business loans to entrepreneurs often with hidden fees and hard-to-compute interest rates attached. Panelists appealed to business owners to do some due diligence before signing on for these kinds of loans.



The Small Business Finance Panel highlighted some of the pitfalls for entrepreneurs looking for financing.

In the final panel, the focus turned back to the investing public under the topic “Challenges facing investors.” Moderator Jon Mayhugh of the Wake Forest University Community Law Clinic led a discussion featuring Ron King, Chief Compliance Officer of the Capital Investment Strategies; Lori Schock, Director of Investor Education at the U.S. Securities and Exchange Commission; and Kevin Harrington, Director of the Secretary of State’s Securities Division.

Panelists highlighted the danger of Ponzi schemes, affinity fraud and investors failing to take such basic steps as checking the background of financial advisers and falling prey to guarantees of high returns. King focused on the threat of cyberattacks and provided some simple rules to deal with identity theft in the investing world, including notifying authorities and setting up hard-to-crack passwords.

When the event wrapped up at day’s end, finance seemed a somewhat less complicated subject to many attendees. Not a bad end to a conference set on “Making Finance Cool Again.”

Fackrell Pleads Guilty

Continued from [page 1](#)

“Fackrell is an unscrupulous scammer that betrayed those who trusted him with their nest egg. Instead of using his clients’ money for legitimate investments, as he promised he would, Fackrell focused on enriching himself and perpetuating his fraud through lies. Thanks to the great work of our law enforcement partners Fackrell’s business of siphoning his clients’ money is over,” said U.S. Attorney Rose. “This case is an example of how financial predators will use lies and deceit to get their hands on people’s hard-earned money, quickly turning trusting investors into financial fraud victims,” Rose added.

“At its most basic level, this is a case about greed and the abuse of trust. Charles Fackrell had no regard for the victims he betrayed, making empty promises for big investment returns. Now he will be held accountable for his actions because of the agents and prosecutors who worked so diligently to bring him to justice,” said Special Agent in Charge Strong.

“This case is particularly egregious because unlike the majority of registered stock brokers, this scam artist betrayed the trust of his clients for his own personal gain and benefit,” Secretary Marshall said. “We are extremely proud of assembling a case that has resulted in a guilty plea today.”

Fackrell was detained following his guilty plea. The securities fraud charge carries a maximum prison term of 20 years and a \$5 million fine. A sentencing date for the defendant has not been set.

The case is being investigated by the FBI and the Securities Division of the North Carolina Department of the Secretary of State. U.S. Attorney Rose and Secretary Marshall also thanked the North Carolina State Bureau of Investigation, the Yadkinville Police Department and Kinston’s Department of Public Safety for their invaluable assistance in this investigation.

The prosecution is being handled by Assistant United States Attorney Daniel Ryan of the U.S. Attorney’s Office in Charlotte.

Follow SOSNC on Social Media!



The North Carolina Secretary of State’s Office now has accounts on several popular social media platforms to make it easier than ever for the investing public and regulated communities to keep up with important news you need to know.

You can now follow SOSNC on Twitter, Facebook, LinkedIn and YouTube for updates on everything from investor education to trademarks enforcement and charitable solicitation regulation.

Click on the platform icons above to go to SOSNC’s social media accounts!

SOSNC Hosts Business Resource Alliance

SOSNC was pleased to host the N.C. Rural Economic Development Center's Business Resource Alliance at our Atlantic Avenue Offices in April. The Alliance is focused on developing a network of grassroots level entrepreneurs and educators to champion community-based small businesses.



Secretary Elaine F. Marshall spoke about SOSNC’s role in capital formation in North Carolina, noting that our Corporations Division helps thousands of businesses incorporate every month. “We take great pride in making that experience a pleasant one. We have reduced a lot of red tape over the years and put vast amounts of what we do online.”



SOSNC Securities Division Director Kevin Harrington and Corporations Annual Reports

Supervisor Keith West also presented information about how their Divisions work with businesses across North Carolina.

Wilmington Workshop Raises Awareness of Financial Elder Abuse

“Modern Times, Modern Crimes 2016”

State and local officials spoke to a packed house at Brightmore Independent Living of Wilmington on Friday, April 22 to sharpen the focus on the growing problem of financial elder abuse. Secretary of State Elaine F. Marshall joined officials including Postal Inspector David Oakley and Assistant District Attorney Janet Coleman in bringing attention to the problem and offering tips to help seniors steer clear of fraudsters. The event was emceed by Wilmington Star News Community Editor Si Cantwell.



Delivering the keynote address, Secretary Marshall reported that in a 12 month period between 2014 and 2015 investment scam artists stole \$91 million from some 700 known victims. She urged workshop goers to always be on the lookout for scams, pointing out that con artists often spend months getting to know people and building bonds of trust before talking to them about a potential investment.



Secretary Marshall addressing workshop.

“I don’t care how good you are at reading people, the odds are that the first time you meet or talk to a scam artist, you are not going to realize who they really are,” cautioned Marshall. “But, the first time you meet or talk to one of these crooks, they will be sizing you up as a potential victim.”

Marshall urged anyone considering an investment to first call the Secretary of State Securities Division at 1-800-688-4507 to make sure that the person pitching the investment opportunity, and the investment opportunity itself, are properly registered with the state. Not being registered is one of the most common red warning flags of an investment scam.

Marshall added that even registered brokers and investment advisers that you’ve known for years may be tempted to commit fraud if they themselves fall on hard times, so it’s also wise for investors to occasionally check on their broker’s or adviser’s disciplinary history.

The event included an Elder Abuse Awareness Walk to help bring wider attention to the issue.

Other speakers addressed issues including identity theft, Medicare fraud, mail fraud and reporting suspected abuse to Adult Protective Services.



**In the
News**

Check out coverage of the workshop from [WSFX](#) and [Time Warner Cable](#).

FINRA: Report on Digital Investment Advice

Technology has long played a central role in financial services innovation. It continues to do so today as many firms in the securities industry introduce new digital investment advice tools to assist in developing and managing investment portfolios.

FINRA has undertaken a review of selected digital investment advice tools to assess these developments. The observations and practices in this report are drawn from FINRA’s discussions with a range of financial services firms that provide or use digital investment advice tools, vendors and foreign securities regulators as well our regulatory experience.

The full report, along with a 12-minute video explanation of the report and its findings, can be found [here](#).

Moore County Man Sentenced for Securities Fraud

Jesse Townsley, 84, a former stockbroker from Moore County, pleaded guilty on April 18 in Moore County Superior Court to one felony Class H count of securities fraud following an investigation by Secretary of State Securities Agents. He has been given a suspended sentence of six to eight months and 30 months probation.

Townsley failed to disclose to a client that he was not registered to sell securities. He also failed to disclose to his client that the SEC had in 1995 permanently barred him from ever again acting as a stockbroker or an investment adviser, a criminal omission of material fact.

Townsley convinced his client to transfer \$120,000 from her retirement account for him to invest, telling her that he could double her money in a year.

He opened a trading account using his client's funds, but within three months the bulk of the money was lost.

Recommended Reading:

Eye-opening Stats on Stockbrokers

A recent New York Times [story](#) looks at an academic [working paper](#) that outlined some troubling stats on the number of complaints or “disclosures” against stockbrokers.

Studying data for brokers working between 2005 and 2015, the paper found 7.28 percent with at least one disclosure for a settled complaint or something more serious. Those stats were considerably higher at some big name firms. The paper found the highest disclosure rate—19.6 percent—at Oppenheimer. After finding five of the 10 counties with the highest percentages of disclosures concentrated in Florida, the paper's authors honed in on Oppenheimer brokers in Palm Beach and found 34 percent with spotty records.

Keep in mind disclosures aren't evidence of wrongdoing, but the working paper does underline the importance of using resources like FINRA's [BrokerCheck](#) to find out more about your firm and its brokers before signing over your money.

Training Conference Focuses on Financial Predators

SOSNC joined the Mooresville Police Department, the National White Collar Crime Center (NW3C) and FINRA in April to offer a training conference for law enforcement officers focusing on investment fraud.

The one-day training was designed to simplify the complexities of investment fraud and give local law enforcement the tools to recognize and pursue these cases in their jurisdictions.

Speaking to officers, Secretary of State Marshall commended courts for handing down longer prison sentences for investment fraudsters, and stressed that investment fraud is in many ways “an invisible crime wave” because so many victims never report it to authorities out of embarrassment or, in the case of elderly victims, concern that their children will worry they can no longer manage their own finances.



Left to right: NW3C Instructor Vic Reichman; Assist. Dir., SEC Investor Ed. and Advocacy, Alan Sorcher; Assoc. Dir., FINRA Investor Ed Foundation, Susan Arthur; Sec. Marshall; SEC Attorney Nick Cordell, NW3C Training Coordinator Josh Santy; and NW3C Curriculum Developer Michael Law.



Updated Investor Alert: Fraudulent Stock Promotions

The SEC's Office of Investor Education and Advocacy is issuing this updated Investor Alert to warn investors about fraudsters who promote a stock to drive up the stock price and then sell their own shares at the inflated price, making money at investors' expense.

Fraudsters who conduct stock promotions are often paid promoters or company insiders who stand to gain by selling their shares after creating a buying frenzy and pumping up the stock price. The promoters or insiders make profits for themselves while creating losses for unsuspecting investors.

The SEC has brought charges against promoters for not disclosing the compensation they were receiving for promoting a stock. In SEC v. Smith, the SEC alleged that the defendants fraudulently promoted a data storage company through emails, online blogs, articles, and other media, without fully disclosing their compensation or that they would be paid more if they increased the company's share price. According to the SEC's complaint, the defendants made false and misleading statements to try to increase the trading volume and share price of the company's stock, including falsely naming well-known companies as customers and making highly misleading projections about investment returns.

Fraudsters may promote a stock in seemingly independent and unbiased sources including:

- ◆ **Social Media:** Fraudsters may use social media to promote a stock anonymously or while pretending to be someone else. Read [Updated Investor Alert: Social Media and Investing -- Stock Rumors](#).
- ◆ **Investment Newsletters:** In some cases, an investment newsletter may promote a particular stock because the newsletter publisher has been paid to do so. Read Investor Alert: [Investment Newsletters Used as Tools for Fraud](#).
- ◆ **Online Advertisements:** Fraudsters may purchase pop-up ads or banner ads that are targeted to a particular group based on demographics or interests. Ads may be fraudulent even if they appear on legitimate websites, including on the online financial pages of news organizations.
- ◆ **Email:** Email spam may indicate an email scam. Read [Investor Alert: Don't Trade on Pump-And-Dump Stock Emails](#).
- ◆ **Internet Chat Rooms:** Fraudsters often use aliases in Internet chat rooms to hide their identities and post messages urging investors to buy stock in microcap companies based on supposedly "inside" information about impending developments at the companies.
- ◆ **Direct Mail:** Fraudsters may send you high-end glossy mailers promoting certain stocks.

[Microcap stocks](#) (low-priced stocks issued by the smallest of companies), including [penny stocks](#) (the very lowest priced stocks), are more susceptible to stock price [manipulation](#). Publicly-available information about microcap companies often is scarce, making it easier for fraudsters to spread false information. In addition, it is often easier for fraudsters to manipulate the price of microcap stocks because microcap stocks historically have been less liquid than the stock of larger companies ("liquid" investments are those that can be sold easily).

Be especially cautious regarding stock promotions if there are any warning signs of microcap fraud including:

- ◆ The SEC suspended public trading of the security or other securities promoted by the same promoter. Click [here](#) for a list of recent SEC trading suspensions.
- ◆ Increase in stock price or trading volume linked to promotional activity. Some microcap stocks are quoted on OTC systems including [OTC Bulletin Board](#) and [OTC Markets](#).
- ◆ Press releases or promotional activity announcing events that ultimately do not happen (*e.g.*, contracts expected to produce revenue that never get finalized).
- ◆ No real business operations (little or no assets; minimal revenues; false press releases).
- ◆ Company issues a lot of shares without a corresponding increase in the company's assets.
- ◆ Frequent change in company name or type of business.

Read recent [reports](#) that the company has filed with the SEC. For more information about investing in microcap stocks, read [Microcap Stock: A Guide for Investors](#).

When considering any potential investment, be aware of these red flags of investment fraud:

- ◆ **Aggressive stock promotion.** Exercise extreme caution if there appears to be greater promotion of the company's stock than of the company's products or services.
- ◆ **Guaranteed high investment returns.** Be highly suspicious if the promoter promises you a high rate of return on your investment.
- ◆ **Pressure to buy RIGHT NOW.** Be wary if the promoter pitches the investment as a "limited time only" opportunity, especially if the promoter claims to base the recommendation on "inside" or confidential information.
- ◆ **Unsolicited stock recommendations.** Be skeptical regarding information provided in new posts on your wall, tweets, direct messages, emails, or other communications you did not ask for that promote a particular stock (even if the sender appears connected to someone you know).

Even if a promoter makes specific disclosures about being compensated for promoting a stock, be aware that fraudsters may make such disclosures to create the false appearance that the promotion is legitimate. Additionally, the disclosures may not reveal that the underlying source of the compensation is a company insider or affiliate.

Do not take comfort because the promoter encourages you to buy the stock through your own brokerage account. Even if you do not give the promoter any money directly, your stock purchases may enable the organizers of the promotion to offload their otherwise valueless shares. The promoters may have gotten their shares privately at a very low cost with the intention to profit from their promotion rather than to invest in the company.

Before investing in a company based on a stock promotion, carefully research the investment (read [Ask Questions](#)) and keep in mind that the promoter may be trying to get you to buy into the hype in order to sell his or her own shares at your expense.

Pension Advance Scams: Retirees Beware!

A pension is a type of retirement plan, usually tax-exempt, in which an employee makes contributions toward a pool of funds set aside for an employee's future benefit. The pool of funds is invested on the employee's behalf, allowing the employee to receive benefits upon retirement.

- *Are you earning a pension from your employer and need cash fast?*
- *Are you an investor looking for new ways to grow your investment dollars?*

If you answer yes to either question, you may be the target of a new wrinkle on an old type of scam.

How it Works

The scam involves investors who provide funds to make cash advances and pensioners who are willing to turn over future pension payments in exchange for an immediate lump sum cash payment. Here are some risks both parties should know to keep scam artists from carrying away your nest egg!

In many ways, this current scam is similar to earlier scams involving viatical and life settlement holders. Both involve people holding entitlements to large amounts of money who need cash fast. Scammers offer to purchase the rights to those cash entitlements at a discount and then seek to sell investment interests in these rights to investors.

In an actual case, a company called Structured Investments Co., LLC raised money by selling securities in the form of membership interests in the company. Investors were promised an 8 percent return on their investment with monthly payments that would be generated from U.S. military service pensions. The payments stopped unexpectedly in 2009.

The firm used the money raised from investors to offer lump sum cash payouts to pensioners in exchange for assigning their future pension payments. The company advertised to pensioners that they could "put their pension money to work now by receiving quick cash." The pensioners filed a class action lawsuit against Structured Investments and the court found that the assignment of government pensions is prohibited by federal law and ordered the company to pay back the pensioners.

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To learn more, contact:

NC Department of the Secretary of State, Securities Division, PO Box 29622, Raleigh, NC 27626-0622
www.sosnc.gov | 1(800) 688-4507 or (919) 733-3924 | Fax: (919) 807-2183 | secdiv@sosnc.gov



Investors: Questions to Ask Before You Invest

- ***Is the investment registered?*** Check with your state or provincial securities regulator before you invest to determine if the offering is registered.
- ***Did you do a regulatory check on the background of the principal officers of the company offering the investment?*** Background information is available from your state or provincial securities regulator, BrokerCheck, IAPD, or even the Internet.
- ***Is the transaction legal?*** Some pension rights cannot be transferred. As with the case cited above, federal law prohibits the assignment of U.S. government pensions and disability benefits. Check out the source of the pension funds in which you will be investing.
- ***Can you afford to lose the money?*** These are risky investments. You should not invest more than you can afford to lose.
- ***Can you get your money if you need it?*** Many of these investments are illiquid and you may not have access to your money.

Retirees: Questions to Ask Before You Sell Your Rights

- ***How financially secure is the company offering to buy your entitlement and is the company registered to offer the product?*** Check the background of the principals before entering into the agreement.
- ***How does the company make its money?*** The company typically takes commissions and other fees that may result in the cash payout being lower than the future benefits you are assigning. Do these costs outweigh the convenience of a lump-sum payment?
- ***Do you know what restrictions, if any, apply to your ability to assign your pension benefits?*** Check with your pension administrator to determine what restrictions apply. The transaction could be illegal and therefore void.
- ***Does the company require you to purchase life insurance naming it as the beneficiary?*** If so, you should consider this increased cost when considering whether the payout is worth it.
- ***Did you consider the tax consequences?*** The lump-sum payment you receive may be taxable as income.



Bottom Line: Before making any decisions with your money, ask questions, do your homework and contact the NC Department of the Secretary of State, Securities Division at 1-(800)-688-4507. Also, be sure to visit NASAA's Serve Our Seniors website at serveourseniors.org for more information for senior investors.

NASAA Informed Investor Alert

NASAA has provided this information as a service to investors. It is neither a legal interpretation nor an indication of a policy position by NASAA or any of its members, the state and provincial securities regulators. If you have questions concerning the meaning or application of a particular state law or rule or regulation, or a NASAA model rule, statement of policy or other materials, please consult with an attorney who specializes in securities law. For more investor alerts and advisories, visit www.nasaa.org





Investor Bulletin: Performance Claims

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to educate investors about investment performance claims. If you are in the market for an investment, you will likely come across sales and marketing materials that describe an investment's performance. You should know that performance information can be presented in many different ways. Before making a decision, always make sure you understand how any performance claim is calculated and presented – and whether or not the claim is reliable and applies to your particular circumstances. Here are a few things to consider.

How is performance calculated and presented?

Considering what factors are included in a presentation of performance calculations—and what factors are not—may help you use performance information to make a more informed investment decision.

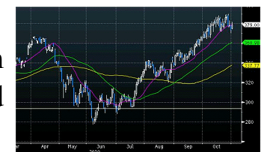
- ◆ **Fees.** You will likely pay certain fees related to your investment. Fees reduce investment returns, so you should always consider what fees are included in the performance calculations. If fees are not included in the performance calculations, information disclosing what fees were excluded and how the excluded fees would have affected performance should be presented. For more information about fees and expenses, see [Investor Bulletin: How Fees and Expenses Impact Your Investment Portfolio](#).
- ◆ **Your financial circumstances.** Performance is just one of many factors you may want to consider when making an investment decision. A presentation might not take into account factors such as your age, income, other investments, or debt, all of which may affect your financial situation and risk tolerance.
- ◆ **Market and economic conditions.** Performance calculations should be considered in light of material market and economic conditions. For example, while a particular investment return might be above average during a period of economic downturn, that same return could be below average during a period of generally favorable economic conditions.
- ◆ **Methodology.** A presentation should describe its process for calculating performance. Factors such as how a performance calculation accounts for dividends and its assumptions about taxes and market and economic conditions are important to understanding performance calculations.



How reliable is a performance claim?

Evaluating the reliability of a performance claim may help you use performance information to make a more informed investment decision.

- ◆ **Performance guarantees.** It is virtually impossible to guarantee returns on investments that have market risk (e.g., stocks) because profitability may depend in part on future market forces.
- ◆ **“Backward looking” performance.** Backward looking performance may be based on actual historical performance and/or “back-tested” performance information. “Back-testing” involves applying an investment strategy (sometimes referred to as an “algorithm” or “model”) to past market conditions to show how the strategy may have performed if it had existed or been in operation then. Because back-testing does not portray actual performance, it should be clearly labeled as “hypothetical” or as a “simulation.” **Backward looking performance cannot predict how an investment strategy will perform in the future.**



- ◆ **Cherry-picking past performance.** Performance should not be presented for only periods of good returns and exclude periods of bad returns (a practice known as “cherry-picking”). You should question any performance presentation that does not cover reasonable time periods across variable market conditions, including both up and down markets.
- ◆ **Benchmark performance.** The performance of an investment strategy may be compared to that of a benchmark (e.g., a market index that tracks how a particular segment of the market is performing, like the S&P 500). The performance of a benchmark may not reflect the deduction of the fees that you pay, which would reduce your returns. The choice of an appropriate benchmark is important in evaluating performance because it is important to compare apples to apples. If a performance presentation appears to use a benchmark representing a different market segment and types of investments than those called for by the investment strategy of your investment, you should question why that benchmark was used.

Conclusion

You may want to consider investment performance when making an investment decision. However, before relying upon performance claims, you should ask questions to help you understand how that performance is calculated and presented, and to evaluate the reliability of those performance claims.

Take the Five-Minute Challenge!



As the articles throughout this newsletter suggest, there are plenty of unscrupulous people – even here in North Carolina! -- who are working very hard to steal your hard-earned money through too-good-to-be-true investment opportunities.

It is important for everyone to know that, with some exceptions, anyone who sells or promotes an investment – or who is paid to provide individualized investment advice – has to be registered with the NC Securities Division in order to lawfully do business in North Carolina.

While registration in and of itself is no guarantee against fraud, we can say with 100% certainty that anyone not registered who is supposed to be is definitely committing fraud.

We therefore encourage you to take our challenge: Take **five minutes** to call our office at 1-800-688-4507 to see if the person you have been dealing with – perhaps even for years – is properly registered and/or has a disciplinary history. You owe it to yourself and your family to check.

*Ask yourself this: Can you afford **NOT** to take the challenge?*



Calendar of Upcoming Events

A representative from the Securities Division will be giving an anti-fraud presentation on the following dates and locations. Dates and times are subject to cancellation (although cancellations are rare), so please call the contact number listed to confirm the event is still on before leaving for it. All presentations are free and open to the public unless otherwise indicated. If you would like to schedule a speaker for your church, business, group or organization, please contact [John Maron](#), [Leo John](#) or [Lauren Benbow](#) at (800) 688-4507. For a complete list of all upcoming events, please check out our online [calendar](#).

Date	City	Details
5/2/16	Brevard	A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. This event is free, but open only to College Walk Retirement Community residents and their guests. Location: College Walk Retirement Community, 100 College View Court. Time: 3:00 PM — 4:30 PM. For more information, please contact Valerie Tilson at (828) 884-5800.
5/2/16	Hendersonville	A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. This event is free, but open only to Lake Pointe Landing residents and their guests. Location: Lake Pointe Landing Retirement Community, 333 Thompson St. Time: 7:00 PM — 8:30 PM. For more information, please contact Amy Towery at aptowery@centurypa.com .
5/3/16	Asheville	A representative of the NC Secretary of State's Office will discuss advance health care directive and the Secretary of State's secure, online registry for advance directives in a presentation on the MAHEC Biltmore Campus. This presentation is open to the public, but registration and a fee is required. Location: 121 Hendersonville Road. Time: 9:30 AM—12:00 PM. For more information, please contact Jennifer Stuart at jennifer.stuart@mahec.net .
5/3/16	Brevard	A representative of the NC Department of the Secretary of State Securities Division will give a presentation to the Rotary Club of Brevard about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This presentation is free and open to the public. Location: Jaime's Crole Brasserie, 44 E Main Street. Time: 12 PM — 1 PM. For more information contact Lauren Benbow at lbenbow@sosnc.gov .

- 5/4/16 Greensboro “Legal Issues in Crowdfunding” workshop. A representative of the NC Secretary of State’s Office will speak about securities regulation and crowdfunding, discussing crowdfunding as a form of alternative finance for startups, as well as the relationship between crowdfunding and the securities industry. Time: 6 PM– 7PM. Location: The Nussbaum Center for Entrepreneurship, 1451 S Elm-Eugene Street. For more information, contact Justin Streuli at jtstreul@uncg.edu.
- 5/5/16 Raleigh “Regulation Crowdfunding: 10 Rules to Live By Post-JOBS Act.” A representative of the NC Secretary of State’s Office will present information during this complimentary program from Smith Anderson about crowdfunding processes and whether crowdfunding is right for your business. Time: 6:00 PM– 7:30 PM. Location: Smith Anderson, 150 Fayetteville Street, Suite 2300. This event is free and open to the public but [registration](#) is required.
- 5/6/16 Edenton “Investment Fraud: Guarding Your Assets in a Scary World.” A representative of the NC Secretary of State’s Securities Division will present a workshop on investment fraud aimed at older Americans. This workshop will also include information about advance health care directives and a secure, online registry maintained by the Secretary of State’s Office for advance directives. This presentation is free but open only to Edenton Primetime residents and their guests. Location: Edenton Primetime, 106 Mark Drive. Time: 2:30 PM — 3:30 PM. For more information contact Shaughnessy Sutton at Victorian Senior Care.
- 5/11/16 Raleigh The NC Secretary of State’s Office will have an exhibition booth at the “State Employees 2016 Wellness & Safety Expo.” Location: The Jim Graham Building, NC State Fairgrounds, 1025 Blue Ridge Blvd. Time: 9:00 AM — 4:00 PM.
- 5/12/16 RTP Small Business Growth Funding Symposium. This full day event is designed to help small businesses understand the nuts and bolts of growth financing. Secretary of State Securities Legal and Business Outreach Specialist Leo John will deliver the lunchtime keynote address focusing on how SOSNC assists business formation in North Carolina. Time: 9 AM—5 PM. Location: Frontier RTP, 800 Park Offices Drive. This event is open to the public, but [registration](#) and a fee are required. For more information please contact Whitney Hildebran at (919) 962-0389.
- 5/14/16 Cary “Guarding Your Assets in a Scary World” anti-fraud presentation. A representative of the NC Secretary of State’s Securities Division will speak about investment fraud targeting senior citizens, as well as information about the secure, online Advance Health Care Directive Registry maintained by the Secretary of State’s Office. This event is free, but open only to Jordan Oaks Retirement Community residents and their guests. For more information, contact Sheila Bullock at (919) 387-8250 or Sheila.bullock@holidaytouch.com.

- 5/19/16 Kill Devil Hills “Guarding your assets in a Scary World.” A representative of the NC Secretary of State’s Office will speak about investment fraud aimed at senior citizens. This presentation will also include information about the Advance Health Care Directive Registry maintained by the Secretary of State’s Office. Time: 12 PM—1 PM. Location: Thomas A. Baum Senior Center, Mustian Avenue. This event is free, but open only to invited guest. For more information contact Katie McCarron at mccarronk@dcdss.org.
- 5/21/16 Durham Durham Aging Well Conference. Come by the NC Secretary of State’s exhibition booth at Durham’s Aging Well Conference on Saturday, May 21! A representative will be speaking about the Department’s Advance Health Care Directive Registry, a secure online registry for advance directives. Time: 9:00 AM—3:30 PM. Location: Durham County Department of Public Health, Human Services Building, 414 East Main Street. This event is free and open to the public. For more information contact Melissa Black at mblack@dconc.gov.
- 5/24/16 Whiteville “Scam Jam” anti-fraud event. Secretary of State Elaine F. Marshall will join Columbus County Sheriff Lewis Hatcher, DA Jon David, and other state and local officials in addressing the dangers of financial fraud and offering tips to steer clear of scam artists. Topics will include identity theft, securities fraud, fake charity scams and Medicare fraud. Time: 9 AM—12 PM. Location: Southeastern Community College, 4564 Chadbourn Hwy. This event is free and open to the public, but registration is requested. Contact Elizabeth Chase at 910-642-7141 ext 360 or Elizabeth.chase@sccnc.edu to register by May 20!
- 5/25/16 Grantsboro Pamlico County Aging Well Expo. The Secretary of State’s Office will have an exhibition booth at the 2016 Aging Well Expo sponsored by Pamlico County Senior Services. Come by and see us! We’ll be sharing information on the Advance Health Care Directive Registry maintained by the Secretary of State’s Office. Time: 10 AM —1 PM. Location: Pamlico Community College. 5049 NC-306 in Grantsboro. The expo is open to the public. For more information contact Violet Ollison at violet.ollison@pamlico.org.
- 6/7/16 Waynesville A representative of the NC Secretary of State’s Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: St. John the Evangelist Catholic Church, 234 Church Street. This event will be free and open to the public. For more information please contact Sandra Breakfield at sandrab@charlottediocese.org.

6/9/16

Morehead
City

“Scam Jam” Anti-fraud event. Officials from the NC Secretary of State’s Office, NC Department of Justice Consumer Protection Division, and the NC Department of Insurance Senior Health Insurance Information Program will provide information to help prevent you from falling victim to a wide range of scams. Time: 1 PM — 4 PM. Location: Leon Mann Senior Center, 3820 Galantis Dr. This event is open to the public.



On The Docket

The following cases are ones in which the Securities Division has had some involvement, either as the lead investigative agency or in a supporting role.

Darren Joseph Capote, of Patterson, NY, was indicted on July 11, 2011, in Ashe County Superior Court on three Class C felony counts of securities fraud. He is alleged to have defrauded an elderly victim in Ashe County. He was released from custody on a \$100,000 secured bond. His next hearing is set for September 26, 2016.

David Alan Topping, of Oak Island, NC, was arrested by law enforcement agents with the NC Secretary of State Securities Division on November 4, 2014 and charged with one felony count of securities fraud. The Brunswick County Sheriff’s Office also charged Topping with one felony count of obtaining property by false pretenses and one misdemeanor charge for solicitation to obtain property by false pretenses. A Brunswick County Grand Jury has indicted Topping on the felony charges, which are now pending in Superior Court. Topping is alleged to have defrauded multiple victims out of more than \$100,000. He is currently out of jail on a \$250,000 unsecured bond.

Charles Caleb Fackrell, of Booneville, NC (see story on [page 1](#)), pleaded guilty on April 12 in federal court to one count of securities fraud. A sentencing hearing has not yet been set. Fackrell is still facing trial in state court on charges of obtaining property by false pretenses. He is currently in the custody of the U.S. Marshals Service under a \$2.25 million bond.

Recent Enforcement Actions



(For prior administrative actions, click on the badge to the right.)

On **May 15, 2015**, the Securities Division of the North Carolina Department of Secretary of State issued a **Final Order of Revocation (Order) against Aegis Capital, LLC** (Aegis). The Order revoked Aegis's registration to operate as an Investment Adviser in North Carolina. The Order found that Aegis had violated provisions of the Investment Advisers Act. Click [here](#) to view the Final Order Revocation.

On **May 4, 2015**, the Securities Division of the North Carolina Department of Secretary of State issued a **Final Order to Cease and Desist to CAUSwave, Inc.** CAUSwave, Inc. This Order made permanent the terms of the Temporary Order to Cease and Desist issued on March 12, 2015. The Final Order found that CAUSwave, Inc. has violated the North Carolina Securities Act. The Order directs CAUSwave, Inc. and any person, employee, officer, director, entity or independent contractor under the direction or control of CAUSwave, Inc. to cease and desist from offering for sale, soliciting offers to purchase or selling, in or from North Carolina, any securities unless and until: (1) such securities have been registered under the provisions of the North Carolina Securities Act, and (2) CAUSwave, Inc. and any person or entity under the direction or control of CAUSwave, Inc. is properly registered as a securities dealer or salesman under the provisions of the North Carolina Securities Act. Click [here](#) to view the Final Order.

On **February 12, 2015**, the Securities Division of the North Carolina Department of the Secretary of State issued a **Final Order to Cease and Desist to Respondents Stark Innovations, L.L.C., and David Alan Topping**, doing business as "Stark Investments, Inc." This Order made permanent the terms of the Temporary Order to Cease and Desist issued on November 5, 2014 in this matter. Respondents failed to object to the issuance of the Final Order or to seek any hearing in this matter. Respondents are prevented and restrained from offering to sell, or selling, securities interests in Stark Innovations, L.L.C., or any other security, in North Carolina without first complying with the North Carolina Securities Act. Click [here](#) to see the Order.

On **January 27, 2015**, the Securities Division of the North Carolina Department of the Secretary of State entered into a **Final Consent Order** with Respondent, **McGrath & Associates, Inc.** McGrath & Associates, Inc. is a registered investment adviser in the State of North Carolina. McGrath & Associates, Inc. violated the registration provisions of the North Carolina Investment Advisers Act by employing an unregistered investment adviser representative. The unregistered investment adviser representative was fully qualified for registration. The registration violation came to the Securities Division's attention through a routine audit of the investment adviser. McGrath & Associates, Inc. properly registered the investment adviser representative on May 13, 2014. Click [here](#) to view the Final Order.



News from the Regulators

The following are links to selected public notices issued by one or more securities regulator. Click the links to view the full notices. These are offered for informational purposes only.

[NASAA Releases Statement on Dept. of Labor Fiduciary Rule](#)

April 6, 2016—NASAA President Judith Shaw released this statement on April 6 regarding DOL’s fiduciary rule, aimed at assuring the financial services industry act solely in the interest of clients. “NASAA has long supported a heightened standard of care for investors and believes that financial professionals should always make recommendations that are in the best interests of their clients. We appreciate that by broadening the application of fiduciary duty, the Department of Labor’s rule raises the standard of care applicable to retirement investors. The need for modernization of regulations governing retirement savings is beyond debate as Americans increasingly turn to individual retirement accounts or employer-sponsored retirement plans to invest for their secure retirement.”

[NASAA Testimony Calls for Balanced Regulatory Approach to Capital Formation](#)

April 14, 2016 — In testimony before a House subcommittee on April 14, the North American Securities Administrators Association (NASAA) reiterated its advocacy of a regulatory approach that promotes capital formation while maintaining investor protections. “We have learned that efforts to spur successful capital formation must reflect a balanced regulatory approach that minimizes unnecessary costs and burdens on small businesses while maintaining robust investor protection,” Washington Securities Administrator and chair of NASAA’s Capital Formation Committee William Beatty testified during a hearing before the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises.

[FSOC Releases Preliminary Report; Raises Concern about Mutual Fund Liquidity](#)

April 18, 2016—In an update of its review of risks to U.S. financial stability, the Financial Stability Oversight Council (FSOC) on April 18 updated its review of risks to the nation’s financial system posed by the liquidity, leverage and redemptions of hedge and mutual funds. The council indicated it would take a light stance on liquidity and redemption risks as it waits to see how the SEC implements funds rules proposed last year. Read the FSOC’s preliminary report in full [here](#).

All investors are strongly encouraged to contact the Securities Division at (919) 733-3924 or toll-free at (800) 688-4507 to check that their investment professional is properly registered ***before*** transferring any assets to that person’s control. One five-minute telephone call to the Securities Division could protect your entire life’s savings from being stolen from you. For a wealth of investor education information, please visit our web site, www.sosnc.gov. Click on the yellow box entitled “Investment Securities.”

This newsletter is produced by the Investor Education Program of the Securities Division of the North Carolina Department of the Secretary of State. If you have questions or comments about this publication, or would like to schedule an investor education presentation with your group or organization, please email [John Maron](mailto:John.Maron@sosnc.gov), Director of the Investor Education Program, or call (919) 807-2106.

Please help us publicize the educational information in this mailing by forwarding it to your contacts around the state. If you no longer wish to receive mailings from the Securities Division, please send an email to: jmaron@sosnc.gov with “Remove from mailing list” in the subject line.

Remember that if an investment sounds too good to be true, it *probably* is!